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18 UNITED STATES DISTRICT COURT

19 FOR THE NORTHERN DISTRICT OF CALIFORNIA

20 HUBB SYSTEMS, LLC	) Case No. C07-02677 BZ
	)
21 Plaintiff/Defendant-in-Counterclaim,	) <b>DEFENDANT MICRODATA GIS, INC.'S</b>
22 v.	) <b>ANSWER TO PLAINTIFF'S COMPLAINT,</b>
23 MICRODATA GIS, INC.,	) <b>AFFIRMATIVE DEFENSES,</b>
24 Defendant/Plaintiff-in-Counterclaim.	) <b>COUNTERCLAIMS, AND JURY DEMAND</b>
	)
	)
	) Courtroom: G
	) Magistrate Judge Bernard Zimmerman
	)
	)

25 Defendant microDATA GIS, Inc. ("microDATA") submits this Answer ("Answer") in  
 26 response to Plaintiff Hubb Systems, LLC's ("Hubb's") Complaint against microDATA alleging  
 27 trademark infringement, false designation of origin, cybersquatting, and unfair competition (the  
 28 "Complaint") and denies any and all such allegations, and further admits or denies the specific  
 allegations of the Complaint and states affirmative defenses and counterclaims, as follows:

29 **JURISDICTION, VENUE AND PARTIES**

- 30 1. microDATA admits the allegations of subject matter jurisdiction in paragraph 1.
- 31 2. microDATA admits the allegations of subject matter jurisdiction in paragraph 2,

1 assuming the validity of the allegations set forth as to Hubb's location and corporate status.

2       3.     The allegations of paragraph 3 set forth a conclusion of law to which no response is  
3 required from microDATA. To the extent that a response may be required, microDATA admits  
4 that it attended the "Cal NENA" trade show but denies that it has made any sales of goods or  
5 services in California and denies the allegations of personal jurisdiction.

6       4.     The allegations of paragraph 4 are non-traversable.

7       5.     Answering paragraph 5 of the Complaint, microDATA lacks information sufficient  
8 to form a belief as to the facts alleged, and on that basis, denies them.

9       6.     Answering paragraph 6 of the Complaint, microDATA lacks information sufficient  
10 to form a belief as to the facts alleged, and on that basis, denies them.

11       7.     Answering paragraph 7 of the Complaint, microDATA lacks information sufficient  
12 to form a belief as to the facts alleged, and on that basis, denies them.

13       8.     Answering the first sentence of paragraph 8 of the Complaint, microDATA lacks  
14 information sufficient to form a belief as to the facts alleged, and on that basis, denies them.  
15 Answering the second and third sentences of paragraph 8 of the Complaint, such sentences assert a  
16 legal conclusion to which no response is required. To the extent an answer is deemed necessary to  
17 the second and third sentences of paragraph 8 of the Complaint, microDATA denies the facts  
18 alleged.

19       9.     Answering the first sentence of paragraph 9 of the Complaint, microDATA lacks  
20 information sufficient to form a belief as to the facts alleged, and on that basis, denies them.  
21 Further answering, however, microDATA states that it began using the mark MICRODATA 911  
22 long before January, 2007. Further answering, microDATA denies that it was using the mark to  
23 identify computer goods and services "very similar" to those sold by Plaintiff. microDATA denies  
24 the allegations in the second sentence of paragraph 9.

25       10.    Answering paragraph 10 of the Complaint, microDATA lacks information  
26 sufficient to form a belief as to the facts alleged, and on that basis, denies them.

27       ///

28       ///

**FIRST COUNT**  
(Trademark Infringement)

11. Answering paragraph 11 of the Complaint, microDATA denies that it has operated its business using the MICRODATA 911 mark for the sale of goods and services related to computer software for public safety because this characterization of microDATA's business and use of the cited mark is overly broad and vague. Further answering, microDATA denies that it has used the mark only "since about October, 2006."

12. microDATA denies the allegations of the first sentence of paragraph 12. As to the second sentence of paragraph 12, microDATA admits that it has used the mark MICRADATA 911 in its advertising and promotion, but denies the remainder of the sentence.

13. microDATA denies the allegations of paragraph 13.

12 14. microDATA denies the allegations of paragraph 14.

13 || 15. microDATA denies the allegations of paragraph 15.

16. microDATA denies the allegations of paragraph 16.

**SECOND COUNT**  
(False Designation of Origin; §43(a) of the Lanham Act)

17. microDATA denies the allegations of paragraph 17.

18. microDATA admits only that Plaintiff has no control over the nature and quality of  
19. the line of products manufactured and sold by microDATA, as alleged in paragraph 18.  
20. Otherwise, the allegations of paragraph 18 are denied.

21 19. microDATA denies the allegations of paragraph 19.

### **THIRD COUNT** (Cybersquatting)

23 20. microDATA admits only that it has registered and used the domain name  
24 MICRODATA 911, as alleged in paragraph 20. Otherwise, the allegations of paragraph 20 are  
25 denied.

26 21. microDATA denies the allegations of paragraph 21.

27 22. microDATA denies the allegations of paragraph 22.

28 23. microDATA denies the allegations of paragraph 23.

**THIRD COUNT (sic)****(Unfair Competition)**

24. microDATA denies the allegations of paragraph 24. Further answering,  
 4 microDATA states that it does not use Plaintiff's trademark.

25. microDATA denies the allegations of paragraph 25.

26. microDATA denies the allegations of paragraph 26.

27. microDATA denies the allegations of paragraph 27.

28. microDATA denies the allegations of paragraph 28.

**AFFIRMATIVE DEFENSES**

10 microDATA hereby asserts the following Affirmative Defenses in this case:

11 A. Lack of personal jurisdiction over the Defendant microDATA.

12 B. Failure to state a claim upon which relief can be granted.

13 C. Hubb's claims fail because for a variety of reasons there is no likelihood of  
 14 confusion.

15 D. If there is any likelihood of confusion, microDATA has senior common law rights  
 16 with respect to its marks and Hubb's use of its marks are infringing on microDATA's rights.

17 E. Hubb's claims are barred by the doctrine of laches.

18 F. Hubb's claims are barred by the doctrine of waiver.

19 G. Hubb's claims are barred by the doctrine of estoppel.

20 H. Hubb's claims are barred by the doctrine of unclean hands.

21 I. By way of further affirmative defenses, microDATA incorporates by reference the  
 22 claims set forth in its Counterclaims against Hubb, below.

23 J. microDATA reserves the right to add further affirmative defenses.

**MICRODATA'S COUNTERCLAIMS AGAINST HUBB SYSTEMS**

25 Plaintiff-in-Counterclaim microDATA, for its counterclaims against Defendant-in-  
 26 Counterclaim Hubb, alleges as follows:

### NATURE OF THE ACTION

1. This is an action for a declaratory judgment that microDATA does not infringe  
Hubb's trademark or, in the alternative, that if the Court finds that the parties' respective marks are  
confusingly similar, that microDATA has senior common law user rights in its marks and Hubb  
therefore is liable for infringement, false designation of origin, and unfair competition against  
microDATA. Hubb has alleged that microDATA's marks, MICRODATA 911 and  
MICRO911DATA and design, as well as microDATA's Internet website address  
(www.microdata911.com), infringe Hubb's "Data911" mark, and has commenced legal action  
against microDATA. microDATA asserts that its marks do not infringe and that, in addition, it  
has senior common law user rights in its marks. In this action microDATA seeks a declaration of  
the rights of the respective parties, and, in particular, a declaration that its use of the marks  
MICRODATA 911 and MICRO911DATA and design is entirely lawful and does not infringe  
Hubb's mark and that it has superior rights to use its mark. This action arises under the Federal  
Declaratory Judgment Act, 28 U.S.C. § 2201, the trademark laws of the United States, 15 U.S.C. §  
1114, et seq., and applicable federal and other law.

## PARTIES

17       2. Plaintiff-in-Counterclaim microDATA is a Vermont corporation with a principal  
18 place of business at 1016 U.S. Route 5, Saint Johnsbury, Vermont, 05819. microDATA is in the  
19 business of providing 9-1-1 mapping software and Internet Protocol (IP)-based data technologies  
20 and related services to public safety organizations. microDATA's products integrate mapping and  
21 call-handling functionalities for public service answering points (PSAPs). In addition,  
22 microDATA provides Geographic Information Systems (GIS) and Automatic Location  
23 Information (ALI) systems for PSAPs and other public safety organizations. microDATA's  
24 products and services provide for the efficient management and routing of emergency calls, the  
25 efficient management and updating of emergency response information, and the efficient locating  
26 and routing of emergency response vehicles to the sites of emergency calls. microDATA does not  
27 provide computer-aided dispatch (CAD) products or services, although certain of its products do  
28 interface with CAD products. microDATA sells its products and related services under the marks

1 MICRODATA, MICRODATA 911, and MICRO911DATA and design. microDATA has been  
2 selling products and services under the MICRODATA mark since at least 1990 and under the  
3 MICRODATA 911 and MICRO911DATA and design mark, or slight variations of such design  
4 mark, since at least 1998.

5       3.     Defendant-in-Counterclaim Hubb is, upon information and belief, a California  
6 limited liability company, with its principal place of business at 2021 Challenger Drive, Alameda,  
7 California, 94501. Hubb is a ruggedized hardware and/or CAD company engaged in designing  
8 and selling mobile PC hardware and related services for emergency vehicles. Hubb sells its  
9 products under the mark “Data911.” Hubb also has a federal registration for its “Data911” mark,  
10 Registration No. 2,546,009, for “computer software, namely for use in providing public and  
11 personal information in the field of public safety, and instruction manuals sold as a unit  
12 therewith.”

## **JURISDICTION AND VENUE**

14       4.     This Court has subject matter jurisdiction over this action pursuant to: 28 U.S.C.  
15     §§ 2201 (declaratory judgment), 1331 (federal question), 1338 (trademarks), and 15 U.S.C. §  
16     1121 (trademarks), as well as 28 U.S.C. § 1332 (diversity of citizenship). The claim arises under  
17     the trademark laws of the United States, and the parties are citizens of different states and the  
18     amount in controversy is greater than \$75,000.

19       5.     Venue is proper in this district pursuant to 28 U.S.C. § 1331(b) and (c) because a  
20 substantial part of the events or omissions giving rise to this claim occurred, or a substantial part of  
21 property that is the subject of the action is situated here.

## FACTS

23 6. microDATA has been in business since at least 1983 in St. Johnsbury, Vermont.

24 7. microDATA has been using the mark MICRODATA in Vermont and elsewhere  
25 since at least 1990 and has been using the marks MICRODATA 911 and/or MICRO911DATA  
26 and design, or slight variations of such design mark, in Vermont and elsewhere since at least 1998.

27        8. microDATA uses its mark in connection with software products and related  
28 services as described above.

1       9. microDATA does not design, manufacture, or sell hardware products identified by  
2 the microDATA marks.

3       10. Hubb uses the mark "Data911" in connection with hardware and certain software  
4 products designed to be used with that hardware.

5       11. microDATA's marks and Hubb's mark are distinct in both visual appearance and in  
6 sound when read aloud.

7       12. The marks are also distinct in connotative meaning.

8       13. The goods and services sold by microDATA and Hubb, on which their respective  
9 marks are used, are distinct.

10       14. The goods and services sold by microDATA and Hubb are not retail consumer  
11 goods, but are relatively expensive, specialized goods and services purchased by highly  
12 sophisticated, discriminating purchasers (governmental organizations, municipalities, and both  
13 public and private public safety organizations such as police departments, fire departments, and  
14 ambulance and EMT services). The purchases are likely to be made only after considerable  
15 thought, review, and deliberation, and often as the result of bidding processes. Purchasers will  
16 examine the goods and services carefully; may test them before making the purchase; and will  
17 understand the differences between the two sources identified by the two marks. There is no  
18 likelihood of confusion given the category of potential purchasers of microDATA's and Hubb's  
19 respective goods and services.

20       15. In addition, Hubb's mark, "Data911" is a combination of two commonly-used  
21 terms. The two elements of Hubb's mark are, both separately and in combination, merely  
22 descriptive, if not generic.

23       16. Hubb's mark is merely one of many marks using "data" that consumers may  
24 encounter in the field of computer hardware and software and related services, and one of many  
25 using "911" that consumers may encounter in the field of public safety-related goods and services.

26       17. Hubb's mark is therefore weak and has a limited capacity to serve as a source-  
27 identifier. The mark is therefore entitled to limited if any protection under the trademark laws.

28       18. There is no likelihood of confusion between the two marks.

19. microDATA's use of its MICRODATA 911 and/or MICRO911DATA and design marks, or slight variations of such design mark, pre-dates both Hubb's first use of "Data911" in certain geographic regions and its registration of its mark (2002), and therefore microDATA has superior common law rights to use its marks.

20. If there is any likelihood of confusion, microDATA has senior common law user rights in its mark and Hubb is therefore infringing on microDATA's rights.

**COUNT I**  
**(Request for Declaratory Judgment)**

21. microDATA incorporates by reference paragraphs 1 through 20, above, as if fully set forth herein.

22. An actual controversy exists in this matter given that: (a) Hubb has alleged that microDATA has engaged in trademark infringement; (b) microDATA has denied the allegations and explained its reasoning; and (c) Hubb has pursued legal action against microDATA.

23. microDATA requests that this Court hear the matter and declare that its use of the marks MICRODATA 911 and MICRO911DATA and design, as well as microDATA’s Internet website address (www.microdata911.com) and any other such address using another top-level domain, do not infringe Hubb’s mark “Data911”; that microDATA is not liable to Hubb; and that microDATA can continue to use its marks on its goods and services and future goods and services. In the alternative, if the Court finds that the parties’ respective marks are confusingly similar, that microDATA has senior common law user rights in its marks and Hubb therefore is liable for infringement, false designation of origin, and unfair competition against microDATA.

**COUNT II**  
**(Trademark Infringement)**

24. microDATA incorporates by reference paragraphs 1 through 23, above, as if fully set forth herein.

25. microDATA was using its mark MICRODATA 911 and its MICRO911DATA and design mark, or slight variations of such design mark, before Hubb either began using or registered its mark. If the Court finds that microDATA's common law marks are confusingly similar to Hubb's "Data911" mark, then Hubb is infringing on microDATA's rights.

1       26.     Hubb has used its mark on its goods in commerce and in its related advertising and  
2 promotional materials.

3 27. If the Court finds that the unlicensed use by Hubb of any colorable variation of  
4 microDATA's trademark is likely to cause mistake or confusion or deception in the minds of the  
5 public, then Hubb's conduct constitutes an infringement of microDATA's mark.

6 28. If the Court finds that the marks are confusingly similar, then microDATA is being  
7 and will be damaged by Hubb's unauthorized use of microDATA's mark, and microDATA's  
8 rights in its mark have been and will be diluted as a result of Hubb's conduct, to microDATA's  
9 detriment.

10 29. The infringements charged above are knowing and willful.

11       30.     The goodwill of microDATA's business under its MICRODATA 911 trademark is  
12     of enormous value, and microDATA will suffer irreparable harm if the infringement is allowed to  
13     continue to the detriment of microDATA's trade reputation and goodwill.

**COUNT III**  
**(False Designation of Origin)**

16 31. microDATA incorporates by reference paragraphs 1 through 30, above, as if fully  
17 set forth herein.

18       32. If the Court finds that the marks are confusingly similar, then Hubb's use of the  
19 "Data911" mark constitutes a false designation of origin which is likely to deceive customers and  
20 prospective customers into believing that Hubb's line of products is that of microDATA and, as a  
21 consequence, is likely to divert customers away from microDATA.

22       33. microDATA has no control over the nature and quality of the line of products  
23 manufactured and sold by Hubb. If the Court finds that the marks are confusingly similar, then  
24 any failure, neglect, or default by Hubb in providing such products will reflect adversely on  
25 microDATA as the believed source and origin thereof, hampering efforts by microDATA to  
26 continue to protect its outstanding reputation for high quality, high precision products, resulting in  
27 loss of sales thereof and the considerable expenditures to promote its products under its mark, all  
28 to the irreparable harm of microDATA.

1 34. Hubb's false designation of origin will continue unless enjoined by this Court.

**COUNT IV**  
**(Unfair Competition)**

4           35. microDATA incorporates by reference paragraphs 1 through 34, above, as if fully  
5 set forth herein.

6       36.     If the Court finds that the marks are confusingly similar, then, given microDATA's  
7 senior common law user rights, Hubb's use of microDATA's mark, or any colorable imitation of  
8 it, by Hubb is likely to cause mistake, or to confuse or deceive the general public.

9       37.    If the Court finds that the marks are confusingly similar , then the use of the name  
10    “Data911” by Hubb constitutes a knowing and willful passing off of the services of Hubb for those  
11    of microDATA.

12       38.    If the Court finds that the marks are confusingly similar , the actions of Hubb  
13 constitute unfair competition with microDATA in the trade by reason of Hubb's use of a mark  
14 confusingly similar to microDATA's trademark.

15       39.    If the Court finds that the marks are confusingly similar , these acts of unfair  
16 competition by Hubb have caused and are continuing to cause irreparable harm to the reputation  
17 that microDATA has established over several decades.

18       40.     If the Court finds that the marks are confusingly similar , then unless the use of  
19 microDATA's trademark by Hubb is restrained, Hubb will continue these acts to the detriment of  
20 microDATA.

**Request for Relief**

22 WHEREFORE, microDATA requests the Court to provide the following relief:

23           A.     Dismiss Hubb's claims against microDATA;  
24           B.     Find that Hubb's actions constitute trademark infringement, false designation of  
25 origin, and/or unfair competition against microDATA;  
26           C.     Award damages to microDATA;  
27           D.     Enjoin Hubb from further acts of infringement, false designation of origin, and/or  
28 unfair competition;

- E. Award microDATA its attorneys fees and costs of this action; and
- F. Award microDATA such other and further relief as is just and equitable.

MICRODATA DEMANDS A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

Dated: August 10, 2007

TERRA LAW LLP

By: /s/ Mark W. Good  
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